IN THE

UNITED STATES SUPREME COURT

NO. 87-6997

EUGENE JOHN CAMELLA,

Appellant/Defendant

VS.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee/Plaintiff

ON APPEAL FROM ORDER AND JUDGMENT OF

THE SUPERIOR COURT, STATE OF CALIFORNIA,

FOR THE COUNTY OF LOS ANGELES

APPELLATE DEPARTMENT

APPENDIX

EUGENE J. CAMELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

APPELLANT

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"A"

FILED

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. EUGENE JOHN CAPELLA, Defendant and Appellant.	Superior Ct. No.CRA24011 Municipal Court of the Beverly Hills Judicial District No. M83675 MEMORANDUM JUDGMENT

This cause having been submitted for decision, and fully considered, judgment is ordered as follows:

The judgment is affirmed.

Defendant contends that the trial court erred in instructing the jury concerning the presumptions contained in Penal Code section 484 subdivision (b) and Vehicle Code section 10855. We do not agree. Both presumptions are presumptions affecting the burden of producing evidence. (See People v. Benner (1971) 19 Cal.App.3d 1052, 1060-1062.) The effect of such presumptions, under Evidence Code section 604, is to require the trier of fact to assume the existence of the

presumed fact unless and until evidence is introduced which would support finding of its nonexi. ce. (See People v. Hedrick (1980) 105 Cal.App.3d 166, 170.) Here, un ike the defendants in Hemmer and Hedrick, defendant never offered testimony concerning the nonexistence of the presumed facts stated in Penal Code section 484 subdivision (b) and Vehicle Code section 10855. We find no error.

Defendant next contends that the trial court erred by not giving an instruction concerning a good faith belief or mistake of law or fact. However, defendant offered no evidence to support the giving of such instructions. Again, there was no error. (People v. Vineberg (1981) 125 Cal.App.3d 127, 138.)

Next, the court docket directly contradicts defendant's contention that he did not waive time on July 1, 1985. Thus, the record shows there was no violation of defendant's speedy trial rights.

Defendant contends that the court was required to stay judgment and sentencing pending defendant's appeal. The record, however, shows that the trial court set bail for defendant pending his appeal. Such was all that was required (Pen. Code, § 1272(2).)

Defendant next claims that the trial court erred by not obtaining a pre-sentencing probation report before sentencing defendant. The trial court had no mandatory duty t do so. (Pen. Code, § 1203(d).)

Our review of the record convinces us that substantial evidence supports defendant's conviction. (People v. Johnson (1980) 26 Cal.3d 557, 562.)

76T176T- PS 12 84

We need not address defendant's remaining contention. (Cal. Rules of Court, rule 105(c); see People v. Merriam (1967) 66 Cal.2d 390, 397.) We observe, however, in our review, no evidence to support appellant's contention.

Presiding Judge

We concur.

Judge

Judge

B

FILED

FEB 24 1955

FRANK A. [illegible] County Clerk

Alan Hardey

BY ALAN HARDEY, DEPUTY

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,	Superior Ct. No.CR A24001
Plaintiff and Respondent,	Municipal Court of the
vs.	Beverly Hills Judicial District
EUGENE JOHN CARELLA,	No. M 83675
Defendant and Appellant.	ORDER DENYING DEFENDANT'S PETITION FOR REHEARING AND APPLICATION FOR TRANSFER

THE COURT*

The above petition and application having been made, submitted and duly considered,

Said petition and application are denied.

IT IS FURTHER ORDERED that all other demands included in the above petition and application are denied.

Margolis, Roberson, Woods

*Before Margolis, P.J., Roberson, J., and Woods, J.

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"C"

FILED

JAN 20 1988

Alan Harding

BY ALAN HARDEY, DEPUTY

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs EUGENE JOHN CARELLA, Defendant and Appellant.	Superior Court No. CR A 24001 Municipal Court of the Beverly Hills Judicial Dist. No. M 83675

ORDER

THE COURT*

Appellant's Motion and Demand for Reporters Transcripts at Public Expense, filed January 26, 1988, having been read and fully considered.

IT IS ORDERED that said motion and demand is hereby denied.

Margolis Woods

* Before Margolis, P. J. and Woods, J.

EXHIBIT "II"

"D"

No. S72 8033097 - SB04885

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED
MAR 2 3 1988
Lawrence P. Gill, Clerk
DEPUTY

EUGENE JOHN CARELLA, Petitioner

v.

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, Respondent;
PEOPLE, Real Party in Interest

Lucas, C.J. did not participate.

Application for stay and petition for review DENIED.

Eagleson
Acting Chief Justice

CERTIFICATE OF SERVICE

I, Eugene J. Carella, the undersigned, do hereby certify that on this 16 day of May 1988, I served a true and correct copy of the foregoing Motion For Leave To Proceed In Forma Pauperis And Affidavit In Support Thereof and Jurisdictional Statement and Appendix on all parties of record and interested persons by first class mail, postage-prepaid, as follows:

Ira Reiner
District Attorney
849 S. Broadway
11th Floor
Los Angeles, CA 90012

John Van de Kamp
Attorney General
State of California
6000 State Building
350 McAllister Street
San Francisco, CA 94102

Judith Stein, Judge
Los Angeles Municipal Court
Beverly Hills Judicial District
9355 Burton Way
Beverly Hills, CA 90210

Fred Woods, Jack Newman,
Alfred Margolis, Robert
Robertson, Judges
Los Angeles Superior Court
Appellate Department
111 N. Hill St., Room 607
Los Angeles, CA 90017

Eugene J. Carella

IN THE SUPERIOR COURT, STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

APPELLATE DEPARTMENT

ORIGINAL FILED
APR 1 1 1988

EUGENE JOHN CARELLA, Appellant/Defendant, vs. PEOPLE OF THE STATE OF CALIFORNIA, Appellee/Plaintiff	Superior Court No. CRA 24001 Municipal Court, Beverly Hills Judicial District No. M 83675 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, pursuant to Rule 10 of the Rules of the United States Supreme Court, that EUGENE JOHN CARELLA, appellant herein, defendant below, appeals the judgment and Order entered February 3, 1988, by the Los Angeles Superior Court Appellate Department affirming the trial court's judgment, and that Order and judgment entered February 24, 1988 denying Appellant's Petition for Rehearing and Application for Certification and Other Relief, to the Supreme Court of the United States.

Said Appeal is specifically based upon the constitutional invalidity of California Vehicle Code Statutes 10851 and 10855 and Penal Code Statute 484, et seq., and that each of said statutes is grossly repugnant to and violative of the Constitution

E

and laws of the United States, and for such additional meritorious grounds as more fully appear in the Record herein.

Said Appeal is statutorily authorized and mandated by 28 U.S.C. Section 1257(2) and otherwise timely brought within the time requirements of Rule 11 of the United States Supreme Court which accords Appellant ninety (90) days from February 24, 1988 to file said Notice of Appeal. Appellant further requests the Clerk of the Court, having possession of the Record, to forthwith certify it and provide for its transmission to the Clerk of the United States Supreme Court in accordance with Rule 13 of the United States Supreme Court.

Dated: April 5, 1988

BY: _____
EUGENE JOHN CAMILLA
Appellant

P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

CERTIFICATE OF SERVICE

I, Eugene J. Carella, the undersigned, hereby certify and swear that on this____day of April 1988 I served a true and correct copy of the within NOTICE OF APPEAL on all parties of record, interested persons, and Clerk of the Los Angeles Municipal Court, Beverly Hills Judicial District, and Clerk of the Los Angeles Superior Court Appellate Department, by first class mail, postage-prepaid, addressed as follows:

Ira Reiner
District Attorney
849 S. Broadway
11th Floor
Los Angeles, CA 90012

John Van de Kamp
Attorney General
State of California
6000 State Building
350 McAllister Street
San Francisco, CA 94102

Clerk
Los Angeles Superior Court
Appellate Department
111 N. Hill Street
Room 607
Los Angeles, CA 90012

Judith Stein, Judge
Los Angeles Municipal Court
Beverly Hills Judicial District
9355 Burton Way
Beverly Hills, CA 90210

Fred Woods, Jack Newman,
Alfred Margolis, Robert
Robertson, Judges
Los Angeles Superior Court
Appellate Department
111 N. Hill St., Room 607
Los Angeles, CA 90017

Paul Woods
Air Bail Bonds
121 E. Regent St.
Inglewood, CA 90301

Clerk
Los Angeles Municipal Court
Beverly Hills Judicial District
9355 Burton Way
Beverly Hills, CA 90210

Clerk, Supreme Court of the UnitedStates
U. S. Supreme Court Building
Washington, D. C. 20543

Eugene J. Carella

Vehicle Code § 10851. Theft and Unlawful Driving or Taking Of A Vehicle.

(a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily to deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment.

(b) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call, and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 of 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment

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in the state prison for two, three, or four years or by a fine of not more than ten thousand dollars ($10,000), or by both the fine and imprisonment.

(c) In any prosecution for a violation of subdivision (a) or (b), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

(d) The existence of any fact which makes subdivision (b) applicable shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Vehicle Code § 10855. Leased and Rented Vehicles.

Whenever any person who has leased or rented a vehicle wilfully and intentionally fails to return the vehicle to its owner within five days after the lease or rental agreement has expired, that person shall be presumed to have embezzled the vehicle.

Penal Code § 484. Theft Defined.

(a) Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud

any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test, and in determining the value of services received the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern. For the purposes of this section, any false or fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information or indictment may charge that the crime was committed on any date during the particular period in question. The hiring of any additional employee or employees without advising each of them of every labor claim due and unpaid and every judgment that the employer has been unable to meet shall be prima facie evidence of intent to defraud.

(b) Except as provided in Section 10855 of the Vehicle Code, intent to commit theft by fraud is presumed if one who has leased or rented the personal property of another pursuant to a written contract fails to return the personal property to its owner within 20 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for retur: of the property so leased or rented * * *.

(c) Notwithstanding the provisions of subdivision (b), if one presents with criminal intent identification which bears a false or fictitious name or address for the purpose of obtaining the lease or rental of the personal property of another, the presumption created herein shall apply upon the failure of the lessee to return the rental property at the expiration of the lease or rental agreement, and no written demand for the return of the lease or rented property shall be required.

(d) The presumptions created by * * * subdivision (b) and (c) are presumptions affecting the burden of producing evidence.

(e) Within 30 days after the lease or rental agreement has expired, the owner shall make written demand for return of the property so leased or rented. Notice addressed and mailed to the lessee or renter at the address given at the time of the making of the lease or rental agreement and to any other known address shall constitute proper demand. Where the owner fails to make such written demand the presumption created by subdivision (b) shall not apply.

Article 1, Section 9, cl 3 (Powers Denied Congress).

No Bill of Attainder or ex post facto law shall be passed.

Article 1, Section 10, cl. 1 [Powers Denied the States].

No state shall enter into any treaty, alliance, or confederation, grant letters of marque or reprisal, coin money, omit bills of credit, make anything but gold or silver coin, a tender in payment of debts, pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts.

Amendment VI [Rights of the Accused].

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime alleged shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor and to have assistance of counsel for his defense.

Amendment XIV.

Section 1: Citizens of the United States.

All persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor to deny any person under its jurisdiction equal protection of the laws.

"G"

EUGENE JOHN CARELLA
P. O. Box 67292
Century City
Los Angeles, California 90067

Defendant

IN THE MUNICIPAL COURT OF THE BEVERLY HILLS JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

EUGENE JOHN CARELLA,

Defendant.

NO: M 83675

REQUEST TO CHARGE JURY

Date: March 18, 1986
Place: Division 5
Time: 9:30 A.M.

COMES NOW Defendant, EUGENE JOHN CARELLA, and does respectfully request that the Court make the following jury charges in the deliberation of this cause.

I.

REMINDER OF VOIR DIRE OBLIGATIONS

In determining the facts, you are reminded that before each member of the jury was accepted and sworn to act as a juror, he was asked questions regarding his qualifications, fairness, and freedom from prejudice or bias . The purpose of those questions was to obtain a fair and impartial jury. On the basis of the answers given, each of you was accepted

EXHIBIT "G"

by the parties to this action. Those answers are as binding on each of you now as they were then, and should remain so until you are discharged from consideration of this case.

II.

GOOD FAITH BELIEF IN RIGHT OR CLAIM TO PROPERTY

Evidence has been introduced which tends to show that the defendant had a good faith belief that the vehicle which he allegedly took was contractually furnished him with consent and permission of owner.

A good faith belief, even though mistakenly held, that one has a right or claim to the vehicle allegedly taken negates an intent to embezzle or unlawfully take the property.

If, after a consideration of all the evidence you have a reasonable doubt as to whether the defendant, because of such belief, intended to take the property of another, you must find him not guilty.

III.

MISTAKE OF FACT

An act committed or an omission made under ignorance or mistake of fact which disproves any criminal intent is not a crime.

Thus a person is not guilty of a crime if he commits an act or fails to act under an honest belief in the existence of certain facts and circumstances which, if true, would make such act or omission lawful.

Belief in these facts and circumstances is a complete defense to the charge even if the belief is unreasonable. Before you may convict the defendant of the charge against him, you must be convinced beyond a reasonable doubt that the defendant did not honestly so believe.

IV.

MISTAKE OF LAW

The crime charged against the defendant requires that the prosecution prove beyond a reasonable doubt that at the time of its commission the defendant had the specific intent to willfully and unlawfully take and unlawfully drive the subject vehicle with an intent to deprive the owner of title and possession of said vehicle.

It is a valid defense to this charge that the defendant did not have this specific intent because of a good faith belief that the law allowed him to act as he did at all relevant times.

A good faith belief is one which is honestly held, regardless of the reasonableness of the belief.

V.

SPECIFIC INTENT

The defendant is charged with a crime which requires that a specific intent to commit such crime be established beyond a reasonable doubt before the crime or degree of the crime is proven.

If from all the evidence you have a reasonable doubt whether defendant was capable of forming this specific intent, you must give the defendant the benefit of that doubt and find that he did not have this specific intent in mind.

CONCLUSION

WHEREFORE, Defendant respectfully prays the Court charge the jury in conformity herewith and further requests leave to make further and additional jury charges in accordance with law.

DATED: March 17, 1986

BY: [redacted]
EUGENE JOHN CAPELLA

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this the 18 day of March 1986 I served a true copy of the foregoing REQUEST TO CHARGE JURY on all parties of record by personal service in Beverly Hills, California, on the following:

Deputy District Attorney
BEVERLY HILLS MUNICIPAL COURTHOUSE
Burton Way
Beverly Hills, California

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, California 90067-0292

Appellant

ORIGINAL FILED
JAN 2 6 1988
COUNTY CLERK

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

EUGENE JOHN CARELLA, Appellant, vs. PEOPLE OF THE STATE OF CALIFORNIA, Respondent.	Appeal No. CRA 24001 LAMC M 83675 APPELLANT'S MOTION AND DEMAND FOR REPORTERS TRANSCRIPTS AT PUBLIC EXPENSE; DECLARATION OF EUGENE J. CARELLA; MEMORANDUM OF POINTS AND AUTHORITIES For Immediate Action

TO: JUDGES OF APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, CENTRAL DISTRICT

COMES NOW, EUGENE JOHN CARELLA, ESQ., Appellant herein, without waiver of disqualification to the Judges of the Appellate Department of the Superior Court of California, County of Los Angeles, Central District, and pursuant to the Rules of Court and the Supreme Court mandate of In Re Armstrong, 126 CA 3d 565, 178 CR 902 (1981), and moves this Court for an Order directing that the entire Transcripts of Proceedings in the false and criminally-inspired

EXHIBIT "H"

and orchestrated trial proceedings, the subject of this appeal, be prepared and provided to Appellant at public expense and concurrently filed with the Appellate Department of the Superior Court to be used in the adjudication of Appellant's appeal now pending before this Court.

In support of the subject motion, Appellant shows the Court the imperative and indisputable need to have verbatim reporters' transcripts to document the gross criminal irregularities carried out against Appellant and the necessity to document a total failure and insufficiency of evidence by the People and reprehensible and gross prosecutorial and trial court prejudice, misconduct and fraud used to secure the false judgment and verdict now before this Court.

Appellant, in addition to making a prima facie showing for the need for said reporters' transcripts, also shows his Affidavit of Present Financial Indigency identified as EXHIBIT "A-3" and attached herewith and incorporated and made a part of his Declaration (EXHIBIT "A) documenting his incapacity to pay for said transcripts. That failure to accord Appellant a reporter's transcript and made a part of the Record on Appeal will result in irreparable injury to Appellant in the disposition of his appeal not yet submitted to this Court, and will grossly abridge his constitutional right to due process of law, as the certified "settled statement" prepared

by the trial court is a fraudulent, misrepresentation of the proceedings and evidence adduced at trial; that the purpose and objective of this appellate court will also be served by the preparation and filing of the Reporters' Transcripts, as said transcripts set forth "fairly and accurately" the evidence and proceedings below and fully demonstrate a total abrogation of this Appellant's constitutional rights at time of trial, as is more completely demonstrated in the grounds for appeal.

Said motion is based upon all papers, pleadings, documents, and the like on file herein--together with the Declaration of Appellant, identified as Exhibit "A" and the Memorandum of Points and Authorities attached herewith.

DATED: January 22, 1988

BY: _____
EUGENE JOHN CARELLA

EXHIBIT A

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE J. CARELLA, declare and state as follows:

1. That I am the Appellant herein-defendant below.

2. That I am herewith and hereby specifically demanding that the Reporters' Transcript of Trial Proceedings, the subject of this appeal, be furnished to me and made a part of the Record on Appeal and filed with this Court forthwith.

3. That a true and correct copy of a Proposed Statement on Appeal and Notice to Prepare and Incorporate Reporters' Transcripts in Statement which was filed with the trial court on or about June 14, 1986 is identified as EXHIBIT "A-1" and attached herewith, consisting of nine (9) pages.

4. That these grounds for appeal have been certified by the trial court in the Statement on Appeal.

5. That a review of said Grounds for Appeal demonstrates twenty-four (24) separate grounds for appeal, several of which assert gross prosecutorial and trial court misconduct, fraud and prejudice which can only be evidenced by verbatim reporters' transcripts. (Grounds Nos. 7, 14, 15, 17, 18 and 22).

EXHIBIT "A"

6. That Appellant further urges this Court to throw out the bogus and false judgment and conviction of the trial court on the grounds of a "complete insufficiency of evidence" and failure of proof by the People (Ground No. 10, 18, 21) and that the trial court failed to allow and admit important evidence to support Appellant's defense (Ground No. 20); and committed gross irregularities and errors of constitutional proportion regarding the giving of prejudicial jury instruction (Ground No. 6); and refused to make other mandatory jury instructions required by her as a matter of law to protect Appellant's constitutional rights to a fair trial (Ground No. 5).

7. That the "settled statement" certified by the trial judge is gross and material misrepresentation of the evidence and proceedings occurring in the trial court, and is also lacking its requirement to set forth "concise factual summaries of each of the proceedings before the court from arraignment to judgment, including a recitation of the manner in which each of defendant's constitutional rights were protected." See, People v. Jenkins, 55 CA 3d, Supp. 55, 127, CR. 870 (1976).

8. That I have been the victim of a common enterprise of criminal racketeering utilizing various state and federal courts throughout the United States to deprive me of my attorney fees, costs, and contingency fees earned by and owed to me, and to destroy my livelihood, person, and

federal practice and reputation.

9. That the subject prosecution, the subject of this appeal, is but "one component" of this invidious criminal racketeering conspiracy orchestrated by state and federal officials.

10. That I am a distinguished legal advocate and recognized as such in Who's Who in American Law because of my contributions to the legal profession and that I was arguing a case in the United States District Court for the Central District of California on June 18, 1985 -- one (1) week before the false arrest.

11. That on or about January 20, 1988, a few days ago, I received word from the United States Supreme Court that my attempts to have the United States Court of Appeals for the Ninth Circuit act to grant me attorneys fees in this matter earned and owed to me and represented to be paid to me (now exceeding $200,000) was rejected. (A copy of said Supreme Court Order is identified as EXHIBIT "A-2" and attached herewith.

12. That I had fully intended to receive these monies, inasmuch as the District Court for the Central District of California authorized an "attorney lien" to protect my quantum meruit legal services in a successful ERISA (Employee Retirement Income Act of 1974) litigation

I conducted against General Electric Company, Inc., et al. on behalf of an asbestosis-affected pension plan beneficiary who had been cheated out of all his disability and retirement benefits, but now enjoys a substantial settlement on account of my legal efforts and time expended on his behalf.

13. That I have expended well in excess of $200,000.00 of monies (pro bono out-of-pocket monies) and in excess of $1 million of billable time on behalf of said client's seeking redress in the federal court system.

14. That in view of the Supreme Court's denial on January 11, 1987 directing that my fees be paid to me, I am now at this time financially incapacitated and indigent, having exhausted all of my resources on behalf of client causes.

15. That the enclosed "Declaration of Financial Condition" in support of my demand for a Reporter's Transcript at public expense is a true and correct statement of my financial condition at this time and I am unable to pay for the Reporters' Transcripts which I have been advised by the Court Reporter would be between $5,000-6,000.

16. That the Reporters' Transcripts of Proceedings are material and essential to adjudicate my appeal and will greatly assist the Court in its appellate decision-making and ensure the interest of justice.

17. That I further state that the subject trial proceedings before this Court were in furtherance of a criminal racketeering conspiracy authorized by the highest members of the Reagan Administration and done with the knowledge, consent and approval and affirmation of Ronald Reagan personally, together with other high-ranking members of the Administration and carried out against me--including, but not limited to, Edwin Meese, William French Smith and William Webster.

18. That it is impossible for me to have a fair appeal, hearing or fair adjudication or fair trial without the preparation of the Reporters' Transcripts at public expense and I have made a prima facie showing for their need before this appeal is submitted to the Court for adjudication.

19. That the prospect for my financial condition to improve in the next six to twelve months is extremely marginal, as the conspiracy to deprive me of all my legal fees and earnings and bar practice has been further amplified and exacerbated by the subject malicious false proceedings.

20. That there is no plausible reason the People can advance to deny the motion, inasmuch as I have alleged a/"misuse of trial court proceedings" which Ira Reiner has a duty to investigate, and said trial transcripts demonstrate criminality in the conduct of the proceedings against me.

21. That I further specifically request that the Court direct Robert Morse, Court Reporter, to forthwith prepare the transcripts of trial proceedings set forth in Pages 8, 9 of EXHIBIT "A-1" attached herewith.

22. That I further request that oral argument on the appeal scheduled for January 28, 1988 be continued for a period of sixty (60) days to allow the Court to receive and review the transcripts referenced herein.

I declare that the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 25 day of January 1988 in Los Angeles, California.

EUGENE JOHN CARELLA, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Appellant, EUGENE J. CARELLA, ESQ., has alleged that the trial court proceedings and judgment of misdemeanor conviction for alleged "theft" of a rental automobile furnished to him pursuant to a written rental contract was in furtherance of a racketeering conspiracy designed to destroy Appellant's federal legal practice, to cheat him of legal fees and monies owed to him, to destroy his lawyering credentials, and to cover up high-level Administration criminal misconduct against him.

The Appellant has recited over twenty-four (24) grounds for appeal, requiring that the misdemeanor judgment and conviction be "thrown out the window" and vacated as a matter of law forthwith. The "settled statement" certified by the trial judge -- whose disqualification is one of the grounds for appeal -- is a rank fraud and grossly fails to state the evidence "fairly and truthfully" and is otherwise an inferior, ill-drafted and self-serving document not in conformity with the Rules of Court, Rule 183, et seq., or mandates governing the requirements of the settled statement. See, People v. Jenkins, supra. Furthermore, Appellant has now advised this Court that within the last two weeks he has learned that the Supreme Court has refused to act to overturn Judge Anthony Kennedy's Order cheating Appellant Attorney Carella of attorney

fees owed to him exceeding $200,000 as a result of his successful legal representation of a client against General Electric Company, Inc. for asbestosis disability. (Note Appellant was in the U. S. District Court at 312 N. Spring Street on June 18, 1985 -- one week before the subject false arrest for taking "a rental car," seeking to collect these very same legal fees.) Appellant has stated twenty-four (24) founds for appeal which demonstrate insufficient evidence, prosecutorial misconduct, fraud and conspiracy in jury selection, and gross misconduct in trial court's giving of "prejudicial jury instructions" and her refusal to make others. The grounds for appeal can only be adjudicated on the basis of verbatim reporters' transcripts. Appellant has made an overwhelming showing of the need for a verbatim reporters' transcript, and there is no way the People can overcome said showing or deny Appellant a verbatim reporters' transcripts without further violating Appellant's constitutional and civil rights and having this Court act to throw out the false conviction. See, March v. Municipal Court, 7 C.3d 422, 102 CR 597 (1972); Mayer v. Chicago, 404 U.S. 189 (1971); People v. Hosner, 15 C.3d 60, 64, 123 CR 381, 384 (1975).

Further, Appellant's current financial status as an indigent determines and activates his right to receive a transcript prepared at public expense, automatically. Moreover, since Appellant has recited twenty-four (24) grounds for appeal of enormous breadth and scope, anything other than a complete reporters' transcript would be inadequate, under March,

supra, and any doubt that a complete transcript should be ordered and prepared, should be resolved in Appellant's favor.

The law in this State is crystal clear. Appellants, such as appellant herein, who are indigent must be provided a verbatim record and reporters' transcripts of proceedings for [illegible] documentation and adjudication of his appeal upon request or demand, where he seeks to appeal a misdemeanor conviction. This has been the law in California since 1982 up and to the present date. In Re Armstrong, 126 CA 3d 565, 178 CR 902.

The grounds for appeal recited by Appellant in his Proposed Statement on Appeal certified by the trial court make a reporter's transcript absolutely imperative to ensuring Appellant's due process and equal protection guaranteed by the Fourteenth Amendment of the U. S. Constitution and the Constitution of this State.

CONCLUSION

FOR ALL THE REASONS advanced herein, Appellant respectfully prays his motion for Reporters' Transcripts at public expense be granted forthwith, and that the oral argument in the aforereferenced appeal be continued for at least sixty (60) days to allow Robert Morse, Court Reporter, to prepare the actual reporters' transcripts.

Let an Order issue that Robert Morse prepare a

reporters transcript of the proceedings identified in Appellant's Notice to Prepare Transcripts filed June 14, 1986 (Pages 8, 9 of Exhibit "A-1" attached) and that said expense be borne by the State of California and that the oral argument scheduled in the subject appeal be continued for a period of sixty (60) days from January 28, 1988 to March 29, 1988; and for such further and additional relief the Court deems necessary and proper.

DATED: January 25, 1988

BY: _____
EUGENE JOHN CARELLA, ESQ.
Appellant

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

Appellant/Defendant

IN THE MUNICIPAL COURT OF BEVERLY HILLS JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Respondent/Plaintiff vs. EUGENE JOHN CARELLA, Appellant/Defendant.	APPEAL NO. CRA 24001 LAMC No. M 83675 APPELLANT'S PROPOSED STATEMENT ON APPEAL AND NOTICE TO PREPARE AND INCORPORATE REPORTERS TRANSCRIPT IN STATEMENT.

COMES NOW EUGENE JOHN CARELLA, ESQ., pursuant to the Rules of Court, and does respectfully submit his within Proposed Statement on Appeal, together with his Notice to Prepare and Incorporate Reporters Transcript and Grounds for Appeal, more fully identified as EXHIBIT "A" attached herewith, and specifically prays that the Presiding Judge or Acting Presiding Judge forthwith certify said proposed statement and take such further action necessary to insure the interest of justice in light of Appellant's continuing challenge and disqualification of the trial judge Judith O. Stein because of her gross bias, prejudice, ill will and hatred demonstrated against Appellant and in favor of the Peop

EXHIBIT "A-1"

Appellant also prays such further and additional relief necessary and proper in light of the circumstances presented herein, and to further supplement the subject proposed statement.

DATED: June 14, 1986

BY: _____
EUGENE JOHN CARELLA, ESQ.
Appellant

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PROPOSED STATEMENT

Appellant specifically incorporates all those grounds for appeal hereinafter set forth, identified as Grounds 1 thru 23, and further specifically incorporates all those reporters transcripts of proceedings in accordance with his notice to prepare reporters transcript made a part hereof, and such further additions in accordance with law.

GROUNDS ON APPEAL

1. Appellant's right to a speedy trial guaranteed by state and federal constitutions was grossly abridged by the Court's denial of Appellant's Motion for Mandatory Dismissal pursuant to Section 1382 of the Penal Code, and said denial constitutes reversible error.

2. The trial court's failure to stand recused and disqualified in accordance with Appellant's Disqualification Petition and its failure to permit Petition to be filed or lodged constitutes reversible error.

3. Trial court's extreme and gross bias and hatred against Appellant and in favor of The People--including threats of oppression, incarceration and punitive fines--deprived Appellant his right to receive a fair trial and other constitutional rights.

4. Court's refusal to dismiss the Complaint and declare the statutory presumptions contained in Sec. 10855 of Vehicle Code and 484 of the Penal Code unconstitutional constitutes an abuse of discretion

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and reversible error.

5. Trial court's refusal and failure to instruct the jury in accordance with Appellant's Written Jury Instructions and Charges filed by Appellant on March 18, 1986 and its failure to make any sua sponte instructions regarding Appellant's defense that "legal title and permission to the subject vehicle was entrusted to him pursuant to written contract" constitutes infirming reversible error.

6. Trial court's instruction to the jury over Appellant's continuing objection with respect to the presumptions contained in Vehicle Code Sec. 10855 and Penal Code Sec. 484, deprived Appellant of his constitutional rights to a jury trial and fair trial and otherwise constitutes fatal reversible error.

7. Trial court's refusal to admonish and prohibit the prosecution for its misconduct in presenting prejudicial charts and graphs not in evidence to the jury and prosecutor's reference to such documents through the course of the trial and other prosecutorial misconduct constitutes infirming reversible error and denied Appellant's right to a fair trial.

8. Trial court's failure to grant Appellant's Motion to Dismiss on the grounds that the subject criminal proceeding is a prosecution for a "civil debt", for enforcement of a "civil contract," constitutes reversible error.

9. The court's refusal to dismiss the complaint on the grounds that the statutes in question are void for vagueness and

ambiguity thereby, denying Appellant his due process rights constituting reversible error.

10. Trial court's refusal to grant Appellant's Motion to Dismiss at close of People's case on the basis of insufficient evidence constitutes reversible error.

11. Trial court's refusal to grant Appellant's Motion for Mistrial and for Motion for Judgment Notwithstanding the Verdict constitues prejudicial, reversible error and gross abuse of discretion.

12. Trial court's refusal to strike People's Jury Instructions or to Accord Appellant Hearing on Jury Instructions constituted prejudicial reversible error and abuse of discretion.

13. Trial court's refusal to grant Appellant a Probation Hearing and accord him a Pre-Sentencing Report after it had set the matter for probation hearing on May 13, 1986 -- together with arbitrary and capricious pre-sentencing conditions and revocation of Appellant's own recognizance status and placing him under excessive bail and physical danger constituted a denial of due process of law and is reversible error.

14. Trial court's denial of Appellant's Motion for Judgmen in Arrest of Proceedings for Fraud and Trial Irregularities including jury tampering and constituted reversible error.

15. Court's failure to properly arraign Appellant on the

subject charges- ogether with the failur of the Court to properly discharge its duties to Appellant at arraignment of sentencing and judgment denied Appellant his right to a fair trial.

16. Trial court's refusal to permit inquiry and questioning by Appellant into juror pool and the undue/restriction voir dire into bias and conflict of interests of jurors constitutes infirming reversible error.

17. The trial court ex parte, in collusion with The People, conspired to fix the jury pool and jurors assigned to the case, and the jury verdict entered on March 24, 1986 was secured by fraud, trickery, deceit and conspiracy between the trial court and The People and various jurors and alternate jurors.

18. The verdict of the jury entered on March 26, 1986 is unsupported by any evidence and was the product of a common enterprise to harm Appellant irreparably and his reputation and livelihood and secured by fraud.

19. The trial court's denial of Appellant's Motion For a New Trial constituted infirming reversible error.

20. The trial court's failure to admit Appellant's evidentiary exhibits and/or Take Mandatory Judicial Notice of Legal Proceedings in which Appellant was participating in California and other forums constituted infirming reversible error

21. Trial Court's refusal to Strike People's Evidentiary Exhibits that were NOT properly authenticated constituted infirming reversible error and should have been suppressed.

22. The trial court's imposition of sentencing Appellant to six (6) months in County Jail with no probation--together with three (3) years of parole--is a cruel, unusual punishment and in excess of the statute and unconstitutional, and must be vacated forthwith, especially in light of the fraud associated with the subject sentencing to prevent Appellant from prosecuting other matters as an attorney and/or plaintiff.

23. For such further grounds as appear from the Transcript of Evidence to be filed herein, including, but not limited to the fact that the subject arrest and consequent proceedings were a fraud, nullity and carried out in total absence of any probable cause and trial court's refusal to dismiss proceedings were in concert with third parties to harm and falsely imprison Appellant.

NOTICE TO PREPARE REPORTERS TRANSCRIPT

As part of his Proposed Statement, Appellant specifically gives notice to prepare and designate the following reporters transcripts and requests that said evidence be prepared, certified, and made a part of his statement herein:

1) All those pre-trial proceedings in the subject litigation occurring on June 27, 1985 in Division IV.

2) All those pre-trial proceedings in the subject litigation occurring on July 1, 1985 in Division IV.

3) All those pre-trial proceedings in the subject litigation occurring on August 9, 1985 in Division IV.

4) All those pre-trial proceedings in the subject litigation occurring on October 20, 1985 in Division IV.

5) All those pre-trial proceedings in the subject litigation occurring on December 2, 1985 in Division IV and Division V.

6) All those pre-trial proceedings in the subject litigation occurring on December 16, 1985 in Division V.

7) All those pre-trial proceedings in the subject litigation occurring on January 12 and January 13, 1986 in Division V.

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8) All those pre-trial proceedings occurring in the subject litigation in Division II on March 7, 1986.

9) All those trial proceedings occurring in the subject litigation commencing on March 17, 1986 in Division V before Judith O. Stein with jury selection and voir dire and trial proceedings on March 18, 1986, March 19, 1986, March 20, 1986, March 21, 1986 and March 24, 1986.

10) All those proceedings occurring in the subject litigation on March 28, 1986 in Division V.

11) All those proceedings occurring in the subject litigation on April 4, 1986 in Division V.

12) All those proceedings occurring in the subject litigation on April 7, 1986 and April 8, 1986 in Division V.

DATED: June 14, 1986

BY: _____
EUGENE J. CARELLA, ESQ.
APPELLANT

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, California 90067-0292

Appellant

ORIGINAL FILED
FEB 0 5 1988
COUNTY CLERK

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

EUGENE JOHN CARELLA, Appellant, vs. PEOPLE OF THE STATE OF CALIFORNIA, Respondent.	) Appeal No. CRA 24001)) LAMC M 83675 (Beverly Hills))) APPELLANT'S MOTION FOR DISQU) FICATION OF JACK NEWMAN, ALF) MARGOLIS, FREDERICK WOODS,) ROBERT ROBERTSON, JUDGES OF) LOS ANGELES SUPERIOR COURT) APPELLATE DEPARTMENT; MEMORA) DUM OF POINTS AND AUTHORITIE DECLARATION OF EUGENE JOHN CARELLA, ESQ.

COMES NOW EUGENE JOHN CARELLA, ESQ., Appellant herein, pursuant to the Rules of Court, and does hereby and herewith move for the immediate disqualification and recusal of Jack Newman, Alfred Margolis, Frederick Woods, Robert Robertson, Judges of the Los Angeles Superior Court Appellate Department, and that each of them be and stand recused, prohibited and proscribed from taking any further action on the aforestated appeal, and that a successor panel be appointed to hear, adjudicate, and otherwise preside over the conduct of the appeal and proceedings and matters related thereto in the above-styled appeal by the Chairperson of the Judicial Council

in accordance with law.

Said motion is made for cause pursuant to § 170.3(c) of the Rules of Court and to protect Appellant's right to receive a fair trial and appellate determination of his cause.

In support of said motion for disqualification of the aforestated judges, Appellant respectfully shows his Declaration identified as EXHIBIT "A" attached. Said motion is further based on all papers, pleadings, documents, records, and the like on file herein -- together with the memorandum of points and authorities; and such further and additional evidence as may be adduced at the hearing hereon.

DATED: February 4, 1988

BY: _____
EUGENE JOHN CARELLA, ESQ.

DECLARATION OF EUGENE J. CAPELLA, ESQ.

I, EUGENE JOHN CAPELLA, ESQ., declare and state as follows:

1. That I am the appellant in Appeal No. CRA 14001.

2. That I make the instant written declaration pursuant to § 170.3(c)(1) objecting in no uncertain way for cause to having the hearing or trial or any aspect of the subject proceeding being adjudicated by Frederick Woods, Alfred Margolis, Jack Newman, Robert Robertson, Judges of the Los Angeles Superior Court Appellate Department, and specifically and unequivocally demand they forthwith cease and desist in the subject proceeding and stand recused.

3. That I am informed and thereon state the aforenamed judges are disqualified on the following grounds:

The judges, and each of them, have personal knowledge of disputed evidentiary facts pertaining to the proceeding and have gained said knowledge of the subject underlying proceedings and facts through ex parte sources not parties to the appeal and agreed in furtherance of a criminal conspir to violate appellant's civil and constitutional rights and to falsely imprison Appellant, a distinguished federal practitioner, notwithstanding the evidence or the merits of his appeal and to rule against him on every issue herein.

4. That the judges have been instructed by third parties, including the National Security Council, Central

Intelligence Agency, U. S. Department of Justice and others to rule against Appellant in the within appeal and to otherwise deny him a fair hearing and appeal, and to falsely imprison appellant and to deny him preparation of a reporters transcript of trial proceedings.

5. That each judge's recusal is required in the interest of justice, and because a person aware of all the facts would entertain a "substantial doubt" that the judges would be able to impartially discharge his duties to Appellant and to adjudicate the merits of his appeals fairly.

6. That each of the named judges has gained knowledge of the proceedings from extra-judicial sources and persons, impairing the discharge of their duties fairly and even-handedly to appellant.

7. That the judges, and each of them, is grossly biased and prejudiced against me, and has acted, and continue to act, in furtherance of a criminal racketeering conspiracy, interstate in nature, to falsely imprison me and to deprive me of my constitutional rights and liberties of life, liberty and property, and I learned on February 4, 1988 that said judges have ruled to deprive and deny me the preparation and filing of the reporters transcripts of trial evidence, making it impossible for me to vindicate the twenty-three (23) grounds on appeal and despite my status as being indigent

and financially unable to pay for said transcripts.

8. That I learned today from the Clerk of the Superior Court Appellate Department the true names and identities of said appellate judges and that said judges have ruled to deny me the reporters transcripts at public expense even though I am indigent and even though the State Supreme Court in In Re Armstrong, 126 C.A. 3d 565 makes it mandatory that I be furnished said reporters transcripts at public expense.

9. That I am informed and believe and thereupon state that said judges have been offered consideration to rule against me in the subject appeal and to deny my motion for transcripts by third persons not associated with said proceedings.

10. That I specifically request the Judicial Council's intervention to appoint a judge to adjudicate this disqualification petition and grant me a hearing on said disqualifications.

11. That the foregoing statements and written declaration are made and filed in good faith to protect appellant's constitutional rights herein and to prevent against further criminal misconduct against Appellant.

I declare the foregoing is true and correct to

the best of my knowledge and ability.

Executed on this 4 day of February 1988 in Los Angeles, California, under penalty of perjury.

EUGENE JOHN CARELLA, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

"DISQUALIFICATION OF JUDGES" PROVISIONS OF THE RULES OF COURT CONTEMPLATE RESPONDENT JUDGES OF THE SUPERIOR COURT, APPELLATE DEPARTMENT, AND ARE CLEARLY APPLICABLE IN ADJUDICATING THE MOTION FOR DISQUALIFICATION OF JUDGES MARGOLIS, WOODS, NEWMAN AND ROBERTSON.

Section 170.5

II.

RESPONDENT APPELLATE JUDGES ARE ONLY EXEMPTED FROM SECTION 170.6 DISQUALIFICATION CHALLENGES AND NOT SECTION 170.3, ET SEQ. CHALLENGES AS MADE BY APPELLANT HEREIN.

Section 170.7
Section 170.3(a)

III.

JUDICIAL COUNCIL MUST BE APPOINTED BY THE CLERK OF THE SUPERIOR COURT FORTHWITH TO ADJUDICATE THE SOUGHT FOR DISQUALIFICATION OF RESPONDENT JUDGES BY APPELLANT.

Section 170.3(c)(4)(5)

IV.

THAT APPELLANT'S MOTION FOR DISQUALIFICATION AND ACCOMPANYING AFFIDAVIT CONSTITUTE A PRIMA FACIE SHOWING OF DISQUALIFICATION PER SE AGAINST SAID RESPONDENT JUDGES OF THE LOS ANGELES SUPERIOR COURT APPELLATE DEPARTMENT REQUIRING THEIR IMMEDIATE RECUSAL AND VACATING OF ANY AND ALL JUDGMENTS, ORDERS RENDERED BY SAID APPELLATE RESPONDENT.

Section 170.3(c)

CONCLUSION

FOR ALL THE FOREGOING REASONS, Appellant respectfully prays that an Order forthwith issue declaring that Respondent Judges of the Los Angeles Superior Court, Jack Newman, Alfred Margolis, Frederick Woods, Robert Robertson be and stand recused, and that the Judicial Council be summoned immediately to adjudicate said disqualification motion and to act promptly to disqualify said judges and to appoint a new appellate panel consisting of four members who are free from bias, prejudice, animous, discrimination against Appellant and who are not acting on an ex parte basis to falsely imprison Appellant and deny him his basic constitution rights, and that any and all orders, rulings, etc. made by said Respondent Judges Margolis, Newman, Woods, Robertson be forthwith vacated in accordance with law.

DATED: February 4, 1988

BY:
EUGENE J. CAPELLA, ESQ.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this the____day of February I served a true copy of the foregoing Appellant's Motion for Disqualification of Alfred Margolis, Jack Newman, Frederick Woods, Robertson, Judges of Los Angeles Superior Court Appellate Department; Memorandum of Points and Authorities; Declaration of Eugene John Carella, Esq. on all parties of record by first class maill, postage prepaid, addressed as follows:

IRA REINER
District Attorney
849 S. Broadway
11th Floor
Los Angeles, CA 90014

/S/
Eugene J. Carella

EUGENE JOHN C.. .A, ESQ.
P. O. Box 67292
Century City
Los Angeles, California 90067-0292

Appellant

ORIGINAL FILED
FEB 17 1983
COUNTY CLERK

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

EUGENE JOHN CARELLA, Appellant, vs. PEOPLE OF THE STATE OF CALIFORNIA, Respondent.	Appeal No. CRA 24001 LAMC M 83675 APPELLANT'S PETITION FOR REHEARING AND APPLICATION FOR TRANSFER; DECLARATION OF EUGENE JOHN CARELLA; DECLARATION OF PAULA PFISTER; MEMORANDUM OF POINTS AND AUTHORITIES.

TO: JUDGES OF APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, CENTRAL DISTRICT [WITHOUT WAIVER OF DISQUALIFICATION TO JUDGES NEWMAN, MARGOLIS, WOODS, ROBERTSON)

COMES NOW EUGENE JOHN CARELLA, ESQ., Appellant herein, without waiver of disqualification to Judges of Appellate Department of Superior Court of California, County of Los Angeles Central District, as constituted pursuant to the Rules of Court and the Supreme Court mandate in In Re Armstrong, 126 CA 3d 565, 178 CR 902 (1981), and moves this Court for an Order of Rehearing and Reconsideration of the Memorandum Judgment of

February 3, 1988 and further order that a complete Transcript of Proceedings in the void and criminally-inspired and orchestrat trial proceedings, the subject of this appeal, be prepared and provided to Appellant at public expense and concurrently filed with the Appellate Department of the Superior Court to be used in the adjudication of Appellant's appeal now pending before this Court.

In support of the subject petition of rehearing and reconsideration, Appellant shows this Court the Declaration of Eugene J. Carella, Esq. and Paula Pfister, demonstrating prima facie the fraud committed by the trial court and People in the preparation of the trial evidence as reflected in the Certified Settled Statement settled by the trial court who was disqualified; the egregious abrogation of Appellant's constitutional due process and equal protection rights to have a complete transcript of trial evidence prepared at public expense and filed as part of the record to document his twenty-four (24) grounds on appeal; and a gross misapplicati and misapprehension of facts and law by the Appellate Department the members of which are the subject of vigorous disqualificati foreclosing further action and invalidating prior action who have in common enterprise with the trial judge excised and obstructed material evidence from Appellant's record on appeal, all of which summate to deny Appellant-Petitioner herein a fair trial, and constitutionally sufficient adjudicati on appeal. Appellant prays his Petition for Rehearing be granted and that the Appellate Department's judgment of Febru

1988 affirming the judgment of the trial court be promptly vacated by a panel of this Court free from bias and prejudice against Petitioner and that the judgment of conviction be vacated post haste because of gross, irreparable and infirming injury and fraud carried out against Appellant, denying Appellant's fundamental right to due process and equal protection of law and a fair trial and fair adjudication on appeal.

Said petition is based on all papers, pleadings, declarations, and the like on file here -- together with memoranda of points and authorities and said further and additional evidence as may be adduced.

DATEAD: February 17, 1988

BY: Eugene John Carella, Jr.
EUGENE JOHN CARELLA, ESQ.

Appellant

DECLARATION OF PAULA E. PFISTER

I, PAULA E. PFISTER, declare and state as follows:

1. That I reviewed the testimony alleged to have been furnished by me at the time of trial of Eugene J. Carella as represented in the Certified Settled Statement.

2. That the testimony I actually rendered at the trial has been significantly and substantially altered and the statements ascribed to me in the settled statement are not true and correct and are known to be inaccurate by the trial judge and District Attorney.

3. That at the time of trial I testified that I was physically with Mr. Carella on the late afternoon of May 11, 1985 when Mr. Carella physically visited the rental offices of MPG Car Rental at the intersection of Doheny and Wilshire Boulevard.

4. That I further testified that it was my knowledge that Mr. Carella had substantial monies with him when he went to the MPG Car Rental office and did for the purpose of making further and additional payment on his account.

5. That I further testified that MPG Car Rental Office and the Union 76 Service Station physically adjoin one with another and that Mr. Carella after not being able to locate anyone at MPG inquired at the Union 76 station if they knew

EXHIBIT "A"

where the MPG personnel were or if they could accept payment for them.

6. That I also testified that Mr. Carella also secured gas from the Union 76 at Doheny/Wilshire adjoining the MPG office after he could not find anyone and secured a receipt signed and stamped May 11, 1985, which receipt would not be permitted to be entered as evidence at the time of trial.

7. That I further testified that Mr. Carella was physically present and in Los Angeles and at the Century Wilshire Apartment location where he resided for a period of approximately two (2) years at all material times and for each and every night in 1984 and 1985, excepting a weekend visit to Palm Springs, and lived in the Los Angeles area and was prosecuting legal matters in the state and federal court located in Downtown Los Angeles regularly and had made various appearances in these courts during this time in question.

8. That I further state that while on the witness stand Mr. Carella showed me a copy of the receipt he received from the Union 76 service station dated May 11, 1985 which he sought to have me authenticate and sought to introduce the receipt into evidence, but the court would not let him.

9. That I further state that I personally accompanied Mr. Carella on June 20, 1985 (one week before the false arrest to the law offices of Roper & Tolino located at 3255 Wilshire

Boulevard and attended a conference scheduled by Charles Woodmansee, a court-appointed referee (Jack Newman involuntarily appointed him), in litigation in which Mr. Carella and I were both plaintiffs, e.g., Eugene J. Carella, Esq., Paula Pfister v. Sheraton Corporation, LASC No. 516 399, where Mr. Carella and myself are suing for Unruh Civil Rights violations and false imprisonment, assault and batter charges and numerous other claims for damages and injunctive relief.

10. That I further state that I had personal knowledge that Mr. Carella also during the week of June 20, 1985, a few days before the false arrest, physically visited and met with Roscoe Jones, Director of the Federal EEOC (Equal Employment Opportunity Commission) in Los Angeles, located at 3255 Wilshire Boulevard, the same location of Roper & Folino, and filed a housing and employment discrimination charge with that office still pending with that Federal commissio

11. That I further state that I know that Mr. Carella on June 18, 1985 just nine (9) days before the subject false arrest was in the U. S. District Court for the Central District of California seeking to be heard on the question of $140,000 of attorney fees owed to him in litigation commenced against General Electric, Inc. and his attorney lien granted him by the district judge. This Court is located at 312 N. Spring Street, Los Angeles, California.

12. That Judge Judith Stein prevented Mr. Carella

from introducing evidence of any of these proceedings and/or to take mandatory judicial notice of them, even though Mr. Carella diligently sought to have such evidence introduced at the time of trial on March 17, 1986, and thereafter.

12. That I have specifically reviewed the settled statement certified by Judith Stein on August 17, 1987, and, in particular, the summary of my testimony. The testimony assigned to me is distorted and altered substantially, to wit: 1) I testified I traveled with Mr. Carella to MPG Rental office on the late afternoon of May 11, 1985, not the evening; 2) the statement that she knew that appellant had a large amount of cash on him at the time (May 11, 1985) is true, but the following statement..."she did not know what he was going to do with the money" is an outright lie and falsehood, and known to be such.

13. That I further specifically state that while on the witness chair I was harassed, intimidated and threatened by the trial judge Judith Stein and that she had also violated my rights when I was absent from the courtroom by having my person and purse searched over my protestation and when there was no reason for this conduct.

14. That I further state that the subject rental vehicle was put in a Century Wilshire parking space which was accessible to inspection each and every night in question, located at 10776 Wilshire Boulevard--a little more than a

mile from the MPG Car Rental offices.

15. That I further state that I was percipient to Mr. Carella's false arrest at the Century Wilshire Apartments in the early morning of June 27, 1985 when I heard Mr. Carella inform Detective Schwab that he had spoken to Jennifer Ayres of the Beverly Hills Police Department who advised him "that 'Schwab' was on an extended vacation."

16. That I am aware that Mr. Carella had gone to the Beverly Hills Municipal Court to see the court reporter Robert Marsh (September 1985) on the transcripts when he was ordered arrested again by Judith Stein to prevent him from obtaining the subject transcripts and documenting his appeal.

17. That I had filed a complaint with the Police Department of Inglewood and the District Attorney's office just prior to the false arrest of Mr. Carella on the grand theft and conversion of all my property, files and possessions acquired over a twenty (20)+-year period and monies taken under false pretenses for the safekeeping of this property. Mr. Carella's property, files and possessions and monies were also with this property that was converted/thefted.

18. That the Police Department and District Attorney's office refused to do anything about this matter, and shortly thereafter caused the false arrest of Mr. Carella for the same charges I lodged with them on the theft/conversion of

our property.

The foregoing statements are true and correct to the best of my knowledge and ability.

Executed on this 17th day of February 1988 in Los Anageles, California under penalty of perjury.

/s
Paula Pfister

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE J. CARELLA, ESQ., declare and state as follows:

1. That I am the appellant-petitioner herein.

2. That the foregoing declaration is made in support of my petition for rehearing and application for transfer to the Court of Appeal made alternatively on said petition.

3. That the subject rehearing petition is filed pursuant to Rule 107 of the Rules of Court.

4. That I further state the judgment of the Appellate Department is so grossly infected with constitutional infirmities, as is the trial judgment, that I am seeking and fully intend to seek appropriate intervention by the Court of Appeal and/or State Supreme Court and/or United States Supreme Court to have the subject fraudulent judgment vacated and thrown out because my constitutional rights to a fair trial and for hearing have been irreparably and irrevocably violated.

5. That I am accordingly requesting that this Court stay the issuance of remittitur consistent with Rule 144(c) of the Rules of Court should it not be disposed to grant the instant petition for rehearing to enable me sufficient time to have the constitutional injuries and infirmities complained of reviewed and redressed by a higher court.

6. That I specifically incorporate the declaration of

EXHIBIT "B"

Paula E. Pfister identified as EXHIBIT "A" [illegible] attached herewith as being recited in support of this declaration.

7. That the Appellate Department decision, the subject of the petition for rehearing, is grossly defective and constitutionally infirmed for the following reasons:

(a) It was rendered by Appellate Department judges who are disqualified and the subject of a disqualification for cause petition, requiring all orders, judgments and the like of said Appellate Department be vacated;

(b) It is infirmed because Appellant, who is financially indigent, has been deprived of his fundamental constitutional right to a Reporters Transcript of Trial Evidence furnished him and made a part of the Record on Appeal to document his twenty-four (24) grounds for appeal. (In Re Armstrong, 126 CA 3d 565, 128 CR 902 (1981);

(c) The settled statement certified by the trial court is a fraud, sham, nullity and not drawn in conformity with the Rules of Court or mandates of the Supreme Court of the State. (See, People v. Jenkins), and should be stricken.

(d) The memorandum judgment willfully mistates evidence and falsely indicates a waiver by Appellant of his constitutional right to a speedy trial which is in direct contradiction to what actually occurred at the pre-trial proceedings;

(e) The memorandum judgment consciously and willfully fails and refuses to consider and address each of the grounds for appeal set forth in the certified settled statement, each of which requires that the trial court judgment be vacated and thrown out as a matter of law;

(f) That the judgment misapprehends the law with respect to mandatory jury instructions and sua sponte instruction required to be made by the trial judge and further ignores the notice and demand requirements mandated by due process consideration before jury instructions on the presumption of Sections 484 and 10855 of the Penal Code and Vehicle Code can be given;

(g) The combination of the Appellate Department's conscious refusal to order the complete Reporters' Transcripts of Trial Evidence, at the same time it seeks to conclude that no evidence exists to document Appellant's grounds of appeal constitutes an actionable fraud on Appellant and taints the judgment.

8. That I specifically state that in January 1986 prior to the start of the actual trial proceedings, in open court before visiting Judge Morse I had the Court Reporter Douglas Weaver read his notes for the actual proceedings that occurred before Commissioner Murphy on June 27, 1985 and July 1, 1985. At that time, in open court, Mr. Weaver specifically stated that his notes for the subject days stated showed that Appellant "did NOT waive his right to a speedy trial" in response to

the Commissioner's direct questions of waiver.

9. That the court docket in this regard is obviously false, incorrect, and was to have been corrected by Robert Tauger, Clerk in Division 5, who was aware of the incorrect docket entry showing a 'waiver.'

10. The Appellate Department judgment is therefore infirmed because it is based on false and mistaken facts and the Reporters Transcripts will so verify.

11. That the Appellate Department judgment also failed to specifically address the gross error committed by the trial court by refusing to grant Appellant a pre-sentencing probation hearing, at the same time it immediately sentenced Appellant and refused to stay the sentencing and judgment pending his appeal in derogation of the laws of this State.

12. That I further state the Reporters Transcripts of Trial Proceedings demanded by me to be made a part of the Record demonstrate prima facie the validitiy of the twenty-fo (24) grounds for appeal recited by me in my Proposed Settled Statement and command the judgment, the subject of this petition, and the underlying trial court judgment, be forthwith vacated. Accordingly, I specifically demand that the Reporters Transcripts be prepared and filed with this Court at public expense.

13. That two (2) salient grounds for appeal conspicuously

not addressed and omitted by the Appellate Department are the disqualification of the trial court moved by Appellant as reflected on the docket sheet which renders null and void all orders of the trial judge, and the gross acts of prosecutorial misconduct ranging from disparaging references of Appellant to the use of diagrams, charts and documents not authenticated or moved in evidence during the course of the trial.

14. That I advised the Appellate Department as far back as October 1986 that the trial judge, who is disqualified, had consciously interfered with and obstructed my rights to secure the Reporters Transcripts by having me falsely arrested after I was ordered by the Appellate Department to secure from the Court Reporter Marsh information concerning said Reporters Transcripts.

15. That my right to secure the subject transcripts at public expense is a fundamental constitutional due process right which is essential to ensure me a fair trial and fair appellate adjudication of my rights on appeal.

16. That Judges Newman, Margolis, Robertson and Woods are disqualified from acting in these proceedings and I specifically demand a successor Appellate Department appointed in accordance with law be convened to adjudicate my appeal and all the grounds asserted therein on the basis of a complete and true record on appeal, including the Reporters Transcripts of Trial Proceedings and that they be preempted from acting further herein.

17. That I specifically incorporate my Motion and Demand for Reporters Transcripts at Public Expense, together with Exhibits filed with the Appellate Department on January 26, 1988 into the within declaration.

I declare that the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 17th day of February 1988 in Los Angeles, California, under penalty of perjury.

/s/

EUGENE JOHN CARELLA, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Statement of the Case

Appellant, a distinguished federal practitioner, was falsely arrested and imprisoned for the "theft" of a rental automobile he secured pursuant to a rental car contract and for which he paid valuable cash consideration in advance. Permission, consent and authorization were furnished to Appellant pursuant to the rental contract. The subject automobile was parked each and every night at Appellant's residence in Westwood located a little more than a mile from the MPG Car Rental offices and easily accessible and observable by MPG personnel.

Appellant has asserted that the entire trial proceedings constituted a nightmarish litany of egregious, heinous, and unprecedented judicial and constitutional abuses perpetrated by the trial judge, Judith Stein, who was hand-picked to falsely incarcerate Appellant to rig the jury pool and jury selection and to deprive Appellant of every major constitutional right and guarantee any American citizen should expect. To obscure and defense her complicity in the criminal racketeering conspiracy against Appellant, the trial judge, whose disqualification was sought by Appellant, has acted during the post-trial phase of the proceedings to frustra the right of Appellant to secure and file the Reporters Transcr of Trial Proceedings evidencing the gargantuan constitutional irregularities inflicted upon Appellant at trial and subsequent thereto.

Prior to this appeal being scheduled for oral argument on January 28, 1988, on the basis of the financial indigency imposed upon Appellant as a result of these vexatious and false criminal proceedings, he moved this Court for a Reporters Transcript at public expense. Notwithstanding the automatic right to secure said transcripts guaranteed by the Constitution, the Appellate Department willfully denied said motion. (See, In Re Armstrong, supra.) Appellant had also previously sought to have a settled statement certified in accordance with the laws in this State. (See, People v. Jenkins, supra) which was also rebuffed by the Appellate Department.

Appellant, because of the enormous bias, prejudice, and animous manifested by the Appellate Department in securing the Reporters Transcript, and learning of this refusal on February 4, 1988, moved for the immediate disqualification of said Appellate Department, consisting of Judges Newman, Margolis, Woods, Robertson. After having moved for said disqualification of said Appellate Department judges, Appellant/learned Appellate Department, while at the same time they consciously rebuffed Appellant's fundamental constitutional right to have a reporter's transcript of trial evidence filed to document his twenty-four (24) grounds on appeal, had concurrently rejected Appellant's appeal "on the merits," finding there to be "no evidence" to support Appellant's grounds on appeal. Further, said Appellate Department considered only two or three of the twenty-four (24) grounds for appeal recited by Appellant, notwithstanding that each of the grounds are meritorious

on their face. The order of the disqualified Appellate Department in its present format is a "virulent affront" to constitutional liberty in this country and unless corrected by rehearing and reconsideration constitutes a debauchery of constitutional jurisprudence and value which cripples our entire system of law.

To permit a corrupt trial judge to inflict such enormous constitutional deprivations upon Appellant at the time of trial is reprehensible; to have a specifically-selected Appellate Department acting in common enterprise with that trial judge to bury the evidence with the Appellant is a crime of the highest order.

II.

AN APPELLATE DEPARTMENT CONSTITUTED IN ACCORDANCE WITH LAW MUST VACATE THE NON-FINAL JUDGMENT AND DIRECT REHEARING OF THE SUBJECT APPEAL TO ENSURE APPELLANT'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

Rule 107
California Rules of Court

III.

DISQUALIFIED APPELLATE JUDGES MUST VACATE ANY AND ALL ORDERS, JUDGMENTS, OR THE LIKE MADE OR RENDERED BY THEM PRIOR TO THEIR DISQUALIFICATION BEING RECORDED.

Section 170.3
California Rules of Court

IV.

FAILURE OF THE TRIAL COURT TO FURNISH APPELLANT A PRE-SENTENCING PROBATION HEARING UPON DEMAND, CONJOINED WITH HIS IMMEDIATE MISDEMEANOR SENTENCING ABRIDGES DUE PROCESS RIGHT TO A FAIR TRIAL AND IS PER SE REVERSIBLE ERROR.

Fourteenth Amendment
U. S. Constitution

V.

APPELLATE DEPARTMENT HAS MANDATORY OBLIGATION TO FURNISH INDIGENT APPELLANT WHO TIMELY DEMANDS REPORTERS TRANSCRIPTS OF TRIAL EVIDENCE AT PUBLIC EXPENSE AND WHO ASSERTS INSUFFICIENCY OF EVIDENCE, GROSS PROSECUTORIAL MISCONDUCT, AND INFIRMING TRIAL COURT BIAS, PREJUDICE, AND DISCRIMINATION IN HIS GROUNDS FOR APPEAL, WITH TRANSCRIPT AND FAILURE OF APPELLATE DEPARTMENT TO SO ACT, CONSTITUTES FATAL ERROR, REQUIRING APPELLATE JUDGMENT AND UNDERLYING JUDGMENT BE THROWN OUT.

In Re Armstrong, supra.

VI.

APPELLATE DEPARTMENT JUDGMENT BASED ON FALSE, FRAUDULENT, AND INCORRECT DOCKET ENTRY, SHOWING WAIVER OF RIGHT TO SPEEDY TRIAL WHEN ACTUAL REPORTERS' TRANSCRIPTS OF ARRAIGNMENT PROCEEDINGS EVIDENCE NO WAIVER OF THESE RIGHTS

IS FLAWED AND MUST SUCCUMB ON REHEARING.

VII.

APPELLATE DEPARTMENT REFUSAL TO CONSIDER AND TO REVIEW AND RESPOND TO EACH OF APPELLANT'S GROUNDS FOR APPEAL (TWENTY-FOUR IN NUMBER), WHICH CONSTITUTE REVERSIBLE ERROR, ABUSE OF DISCRETION OR OTHERWISE INFIRM TRIAL COURT JUDGMENT, COMMANDS THAT THOSE GROUNDS NOT CONSIDERED BE REVIEWED AND REHEARD ON THE MERITS AND A PETITION FOR REHEARING OF THE APPEAL BE ORDERED.

People v. Jenkins, 55 CA 3d. Supp. 55 (1976)

VIII.

APPELLATE DEPARTMENT RELIANCE UPON A "CERTIFIED" SETTLED STATEMENT" SHOWN TO BE A CONSCIOUS FRAUD, MISSTATEMENT, AND PREVARICATION OF TESTIMONY AND OTHER EVIDENCE COMMITTED BY THE DISTRICT ATTORNEY ACTING IN COMBINATION WITH TRIAL JUDGE AND DISQUALIFIED/ APPELLATE JUDGES USED TO AFFIRM JUDGMENT IS PER SE GROUNDS FOR REHEARING, REQUIRING SAID PETITION FOR REHEARING BE GRANTED.

Rule 187, Rules of Court

IX.

APPELLATE DEPARTMENT MISAPPREHENSION OF DUE PROCESS REQUIREMENTS IN HEDRICK AND HEMMER MANDATES INVALIDATES JUDGMENT AND COMPELS REHEARING AND RECONSIDERATION AS A MATTER OF LAW.

People v. Hemmer, 19 Cal.App. 3d
People v. Hedrick, 105 Cal App.

CONCLUSION

FOR ALL THE FOREGOING REASONS, Appellant-Petitioner herein, respectfully prays that the Order entered February 3, 1988, appended as EXHIBIT "C", the subject of the Petition for Rehearing, be reheard and reconsidered.

Appellant further prays that the subject judgment in Appeal No. CRA 24001 after being reheard be forthwith vacated and that a new judgment be entered vacating and throwing out the trial court judgment fraudulently entered April 7, 1986 by Judith Stein because it is wrought with gross constitutional infirmities and judicial error. Alternatively, Appellant asks the judgment be reheard and the appeal be reinstated for hearing for such further and additional argument as may be required by a newly-constituted Appellate Department.

Moreover, should this Court not grant the instant petition, Appellant demands the Appellate Department certify a transfer of the subject appeal to the Court of Appeal in accordance with Rules 62, 63 of the Rules of Court to ensure uniformity of decisions and to protect the integrity of constitutional guarantees that exist in Appellant's favor heretofore evidenced herein. Appellant-Petitioner also respectfully prays that pursuant to Rule 144, the remittitur of the instant appeal be stayed until further order and until Appellant has exhausted his rights to secure intervention

from the Court of Appeal, Supreme Court for the State of California, and/or United States Supreme Court. Said request of stay of remittitur is being made in good faith to fully protect Appellant's fundamental due process guarantees and for such further and additional relief as the Court deems necessary and proper.

DATED: February 12, 1988

BY: /S/
EUGENE J. CARELLA, ESQ.

FILED

FEB 03 1988

FRANK A. ZOLIN, County Clerk

Alan Harding

BY ALAN HARDY, DEPUTY

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. EUGENE JOHN CARELLA, Defendant and Appellant.	Superior Ct. No.CRA24001 Municipal Court of the Beverly Hills Judicial District No. M83675 MEMORANDUM JUDGMENT

This cause having been submitted for decision, and fully considered, judgment is ordered as follows:

The judgment is affirmed.

Defendant contends that the trial court erred in instructing the jury concerning the presumptions contained in Penal Code section 484 subdivision (b) and Vehicle Code section 10855. We do not agree. Both presumptions are presumptions affecting the burden of producing evidence. (See People v. Hamrer (1971) 19 Cal.App.3d 1052, 1060-1062.) The effect of such presumptions, under Evidence Code section 604, is to require the trier of fact to assume the existence of the

EXHIBIT "C"

- 21 -

presumed fac. .ess and until evidenc. s introduced which would support a finding of its nonexistence. (See People v. Hedrick (1980) 105 Cal.App.3d 166, 170.) Here, unlike the defendants in Hemmer and Hedrick, defendant never offered testimony concerning the nonexistence of the presumed facts stated in Penal Code section 484 subdivision (b) and Vehicle Code section 10855. We find no error.

Defendant next contends that the trial court erred by not giving an instruction concerning a good faith belief or mistake of law or fact. However, defendant offered no evidence to support the giving of such instructions. Again, there was no error. (People v. Vineberg (1981) 125 Cal.App.3d 127, 138.)

Next, the court docket directly contradicts defendant's contention that he did not waive time on July 1, 1985. Thus, the record shows there was no violation of defendant's speedy trial rights.

Defendant contends that the court was required to stay judgment and sentencing pending defendant's appeal. The record, however, shows that the trial court set bail for defendant pending his appeal. Such was all that was required. (Pen. Code, § 1272(2).)

Defendant next claims that the trial court erred by not obtaining a pre-sentencing probation report before sentencing defendant. The trial court had no mandatory duty to do so. (Pen. Code, § 1203(d).)

Our review of the record convinces us that substantial evidence supports defendant's conviction. (People v. Johnson (1980) 26 Cal.3d 557, 562.)

TATATAT. FS 12 84

We not address defendant emaining contention. (Cal. Rules of Court, rule 105(c); see People v. Merrien (1967) 66 Cal.2d 390, 397.) We observe, however, in our review, no evidence to support appellant's contention.

Presiding Judge

We concur.

Judge

Judge

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this the ____day of February 1988 I served a true copy of the foregoing Appellant's Petition for Rehearing and Application for Transfer; Declaration of Eugene John Carella; Declaration of Paula Pfister; Memorandum of Points and Authorities on all parties of record by first class mail, postage-prepaid, in Los Angeles, California, on the following:

IRA REINER
District Attorney
849 S. Broadway
11th Floor
Los Angeles, California 90012

Judith Stein, Judge
Beverly Hills Municipal Court
9355 Burton Way
Beverly Hills, California 90210

Eugene J. Carella

EUGENE J. CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, California 90067

Appellant

ORIGINAL FILED
FEB 17 1985
COUNTY CLERK

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

EUGENE J. CARELLA, ESQ., Appellant, v. PEOPLE OF STATE OF CALIFORNIA, Respondent.	Appeal No. CRA 24001 LAMC M 83675 APPELLANT'S FORMAL STATUTORY DEMAND TO CLERK OF APPELLATE DEPARTMENT OF LOS ANGELES SUPERIOR COURT ADVISING JUDICIAL COUNCIL TO SELECT JUDGE TO ADJUDICATE DISQUALIFICATION; DECLARATION OF EUGENE J. CARELLA, ESQ.; MEMORANDUM OF POINTS AND AUTHORITIES.

COMES NOW EUGENE J. CARELLA, ESQ., Appellant herein, and does respectfully make formal demand upon the Clerk of the Appellate Department of Los Angeles Superior Court, pursuant to Rule 170.3(c)(5)(6) to notify the Executive Officer of the Judicial Council to have its vice-chairperson appoint a judge free from bias or prejudice or discrimination against Appellant or in favor of Respondent Appellate Department judges as recited in Appellant's Motion for Disqualification identified as EXHIBIT "B" and attached herewith, to adjudicate said Motion for Disqualification in accordance with law and

to accord Appellant an evidentiary hearing on said disqualification and the right to make argument thereon.

In support of said demand, Appellant respectfully shows his Declaration attached as EXHIBIT "A" herewith and Memorandum of Points and Authorities.

WHEREFORE, Appellant respectfully demands the Clerk forthwith notify the Executive Officer of the Judicial Council of the necessity of the Judicial Council to act to appoint a judge to adjudicate the moved for disqualification of Judges Alfred Margolis, Jack Newman, Robert Robertson and Fred Woods and after adjudicating order said Appellate Department recused.

DATED: February 15, 1988

BY: /s/
EUGENE J. CAPELLA, ESQ.

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE J. CARELLA, ESQ., declare and state as follows:

1. That I am the appellant in the aforecaptioned matter.

2. That on or about February 4, 1988, shortly after learning of the identities for the first time of Appellate Department of Los Angeles Superior Court from the Clerk of Appellate Department, and after also being apprised that Appellate Department acted to deny a Reporters Transcript at public expense, even though indigent, I moved for the immediate disqualification of Judges Alfred Margolis, Jack Newman, Robert Robertson, and Fred Woods on statutory grounds as more fully appears in the Motion for Disqualification identified as Exhibit "B" attached herewith. Said motion was timely filed and served on February 5, 1988.

3. That said disqualification was sought prior to receipt and actual knowledge of an order entered by said Appellate Department on "the merits" of said appeal, which opinion was based in large measure on the lack of evidence in the record to support Appellant's claims and grounds for appeal.

4. That on February 16, 1988, I received a copy of Respondent Judges written verified answer to their disqualification and the factual allegations in support of disqualification, said verified answer filed on February 12, 1988 pursuant

Section 170.3(c)(3). Said verified response by said judges contains material alterations of facts and material omissions as will be more fully shown at the evidentiary hearing.

5. That each of the Respondent judges is prohibited from passing upon his or her own disqualification or "upon the sufficiency in law, fact, or otherwise of the statement of disqualification filed by a party."

6. That I am unable to agree to another judge with the People of the State of California (the adverse party) as to a judge to adjudicate the disqualification motion.

7. That I further state that I have strong grounds to prevent and disqualify Malcolm Lucas to act in his capacity either as chairperson of the Judicial Council or judge of the Supreme Court in this litigation in that he has acted in prior litigations conducted by me adversely in the federal court system to egregiously abrogate my federal constitutional rights and liberties and is subject to per se recusal by me and proscribed from acting herein in any capacity.

8. That Section 170.3(c)(5) compels that the Clerk of the Appellate Department of the Los Angeles Superior Court forthwith notify the Executive Officer of the Judicial Council to have the Vice Chairperson of the Judicial Council act to select a judge to adjudicate the disqualification if the chairperson is unable (because of disability stated

herein) to act to select a judge free from bias and prejudice.

9. That I herewith make an unequivocal demand to have the Clerk of the Appellate Department, Los Angeles Superior Court, act immediately to notify the Judicial Council of the need to select a judge free from bias, prejudice and discrimination against Appellant or his cause and in favor of Respondent Appellate Department judges to adjudicate Appellant's Motion for Disqualification of Respondent Appellate Department attached as Exhibit "B".

10. That I further request the Clerk to advise the Judicial Council of my demand for an evidentiary hearing on the subject motion for disqualification.

11. That I further demand that Respondent Appellate Department Judges Newman, Margolis, Robertson, Woods cease at once from all further conduct and action in the subject appeal.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and ability.

Executed on this____day of February 1988 in Los Angeles, California.

EUGENE J. CARELLA, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

Chapter 3: Disqualification of Judges.

Section Nos. 170.1, 170.2, 170.3; 170.4, 170.5, 170.6, 170.7 of the Rules of Court.

CONCLUSION

WHEREFORE, Appellant respectfully demands that the Clerk notify the Judicial Council of the need to select a judge in accordance with law to adjudicate Appellant's Motion for Disqualification, attached herewith as EXHIBIT "B" and his demand for an evidentiary hearing on said motion.

DATED: February 16, 1988

BY: EUGENE J. CARELLA, ESQ.
Appellant

CERTIFICATE OF SERVICE

I, the undersigned, do nereby certify that on this the____day of February 1988 I served a true copy of the foregoing Appellant's Formal Statutory Demand to Clerk of Appellate Department of Los Angeles Superior Court Advising Judicial Council to Select Judge to Adjudicate Disqualification; Declaration of Eugene J. Carella, Esq., on all parties of record by first class mail, postage-prepaid, in Los Angeles California, on the following:

IRA REINER
District Attorney
849 S. Broadway
11th Floor
Los Angeles, CA 90012

Eugene J. Carella